Remarks

Applicant has amended claims 17, 32, and 47 and cancelled claims 20, 37, and 38. Applicant respectfully submits that no new matter was added by the amendment, as all of the amended matter was either previously illustrated or described in the drawings, written specification and/or claims of the present application. Entry of the amendment and favorable consideration thereof is earnestly requested.

Claims 1, 17, 32, and 47

Claim 1 recites, in part, that the software program instructions allow the user "to alter the meal plan based upon food selections received from the user computer; and . . . to alter the foods database based upon received data." Claims 17, 32, and 47 variously recite that the software program can "receive data relating to foods from the person via the user computer and to alter the foods database based upon the received data."

The Examiner has submitted that U.S. Patent Application Publication 2002/0133378 A1 (Mault et al.) in view of U.S. Patent Application Publication 2006/0053184 A1 (Grana) renders claims 1, 17, 32, and 47 unpatentable under 35 U.S.C. 103(a). (Official Action 6/12/2008, p. 3) Applicant respectfully disagrees.

Mault is directed to software entirely contained on a handheld device to log resting metabolic rate. It teaches the "user entering food consumption through a food log" and "inputting food consumption into a database in the computing device." (Par. 43) Mault does not teach that the database is altered by input at a separate user computer and it does not teach generation of a meal plan.

Grana is entirely directed to evaluation and selection of food. Grana teaches "a list of meals for a one-day period" that allows input "that should be considered in customizing the menu plan." Grana does not teach an alterable foods database.

Obviousness requires a suggestion of all the elements in a claim (*CMFT, Inc. v. Yieldup Int'l Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003)) and "a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in

the way the claimed new invention does." *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741, 82 USPQ2d 1385 (2007). Here, we find that the Examiner has not identified all the elements of claims 1, 17, 32, and 47 nor provided a reason that would have prompted the skilled worker to have arranged them in the manner necessary to reach the claimed in invention.

One skilled in the art would not find it obvious to combine software adapted to run a portable computing device facilitating calculation of resting metabolic rate with a large database server for storing, querying, and managing a wide range of data on food. Additionally, all the elements taught by the claims are not identified in the cited references.

The database of the present invention is not taught by Mault. The database in the present invention facilitates customization e.g. bread from "my favorite" bakery may be very different from bread from another person's favorite bakery. The software allows one to input, store, and easily retrieve personalized information about their favorite foods.

The alterable meal plan of the present invention is not taught by Grana. In the present invention, the meal planner allows the individual to plan out and alter transmitted meals since "the user may alter the planned meals by substituting the planned meals with other suggested meals." (Par. 00110) This gives the user complete control and interoperability. This increased control and customizability contributes to helping the user stay on their plan.

Grana only allows for input in generation of the meal plan. It does not allow a user to record or alter information after the meal is generated. For example, Grana does not allow a user sitting in a restaurant with an already generated meal plan to alter the meal plan as they read the menu by inputting alternative selections into their device. In this way, the present invention allows a user to see how alternative selections impact the meal plan giving the user complete control of their plan while still providing information to make sure they maintain selected goals.

Claims 32 and 47 further recite a computer "to maintain a target food consumption value based upon activity selections." Again, this feature allows a user to alter a meal plan based upon activity the user has engaged in. The user can choose to alter their meal plan prior to selecting it or consuming the meal. Neither Mault nor Grana mention altering a meal plan based on activity.

The networked and alterable foods database is not suggested by the cited references. Moreover, an alterable meal plan is not taught by a combination of the cited references. Therefore, Mault in view of Grana does not render claims 1, 17, 32, and 47 obvious.

Claims 44 and 48

Claim 44 variously recites that the activities which are favorites of the person are specified by the person, while claim 48 recites that the foods and activities which are favorites of the person are specified by the person.

The Examiner has pointed to the Article "Thinning Out The Diet Myths" USA Today, Jan 3, 2001 (the Hellmich article) as teaching this limitation in view of Mault and Grana. Applicant respectfully disagrees.

For example, the Hellmich article states, "encourage children to choose a favorite activity. Physical activity will burn calories and keep them from eating out of boredom." (Hellmich article, pg. 3) The Hellmich article is not directed toward a computer controlled weight management system to aid in weight loss. Rather, the Hellmich article is directed towards exposing diet myths. There is no system disclosed therein, nor is there any teaching of how to implement the general statements (e.g. chose a favorite activity to engage in; have some of your favorite fattening foods while you're on a diet) into a networked computer system. Grana, which teaches a networked system, fails to teach use of exercise in conjunction with food selection and it does not mention the use of favorites.

A rationale to support a conclusion that a claim would have been obvious is that all the claimed elements were known in the prior art and one skilled in the art could

have combined the elements as claimed by known methods with no change in their re-spective functions, and the combinations would have yielded nothing more than predict-able results to one of ordinary skill in the art. *KSR International Co. v. Teleflex Inc.*, 550 U.S.__, __, 82 USPQ2d 1385, 1395 (2007); *Sakiraida v. AG Pro, Inc.*, 425 U.S. 273, 282 (1976). In this case, neither the Hellmich article, nor Mault, nor Grana disclose or teach the claim elements of claims 44 and 48 that are activities which are favorites of the per-son are specified by the person from a favorite activities database.

Accordingly, Applicant respectfully submits that because the cited art fails to teach a favorites database that includes activities which are favorites of the person are specified by the person, no combination of the cited art can render claims 44 and 48 obvious.

Conclusion

It is respectfully submitted that claims 1-19, 21-36, and 39-53, all of the claims remaining in the application, are in order for allowance and early notice to that effect is respectfully requested.

Respectfully submitted,

/Wesley W. Whitmyer, Jr./

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